

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOEL BLACKSON : CIVIL ACTION  
v. :  
WARDEN, SCI WAYMART, et al. : NO. 08-cv-04323-JF

MEMORANDUM AND ORDER

Fullam, Sr. J.

March 31, 2009

The Magistrate Judge to whom this case was referred has filed a Report and Recommendation to the effect that petitioner's application for a writ of habeas corpus was untimely and that petitioner does not qualify for statutory or equitable tolling of the limitations period. I agree, and overrule the objections which have been filed on behalf of petitioner. In addition, however, I conclude that, even if the petition were to be considered on the merits, it must be dismissed.

Petitioner was convicted of third-degree murder. There was ample evidence at trial establishing that the petitioner did indeed shoot the victim; the only possible issue was whether he had the intent to kill required for third-degree murder. Depending upon which version of the somewhat contradictory trial evidence is accepted - an issue for the state courts, not this federal court - there is adequate support for the finding of guilt.

Petitioner's principal argument at this stage is that his trial counsel was inadequate in various respects. He failed

to call character witnesses in support of the petitioner, but the Commonwealth stipulated at trial that the petitioner was of good character, etc. He is charged with having failed to present an adequate defense based upon self-defense; but the petitioner himself declined to testify at trial (after extensive colloquy demonstrating that his decision was his own, and was voluntary). It would appear to have been unavailing to argue self-defense in the face of petitioner's silence on the subject. The state courts have opined that petitioner's counsel was constitutionally adequate, and their decisions seem eminently reasonable.

For all of the foregoing reasons, the petition must be denied. An Order follows.

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ORDER

AND NOW, this 31<sup>st</sup> day of March 2009, upon  
consideration of the Report and Recommendation of United States  
Magistrate Judge Linda K. Caracappa, and the objections filed by  
the petitioner, IT IS ORDERED:

1. The Report and Recommendation is APPROVED and  
ADOPTED.
2. The petition for writ of habeas corpus is DENIED.
3. There is no probable cause to issue a certificate  
of appealability.
4. The Clerk of Court shall mark this case CLOSED for  
statistical purposes.

BY THE COURT:

/s/ John P. Fullam  
John P. Fullam, Sr. J.